IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 224 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HITENDRA NATVARLAL RAJPUT

Versus

JOSEPH JOHN D'SOUZA

Appearance:

MR JITENDRA M PATEL for Petitioners

MR MTM HAKIM for Respondent No. 1

RULE SERVED BY DS for Respondent No. 3, 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/02/2001

ORAL JUDGEMENT

1. By this revision application the original defendants in Regular Civil Suit No. 741 of 1999 pending in the Court of the Civil Judge (J.D.) at Baroda

challenge the judgment and order passed in Misc. Civil Appeal No. 253 of 1999 passed by the Joint District Judge at Baroda.

2. The facts of the case in brief can be stated thus- The respondents preferred the said suit for seeking declaration that the defendants' construction in their property is not legal and they, therefore, be injuncted from making construction. The plaintiffs also tendered an application exh. 5 for interim injunction before the trial Court. The trial Court rejected that application. The plaintiffs, therefore, approached the District Court with Misc. Civil Appeal. The Joint District Judge by his judgment and order dated 15/10/1999 passed the impugned order whereby he partly allowed the appeal. The respondents nos.1, 2 and 3 of the appeal were injuncted from making construction in the margin land adjoining to northern side of the plaintiffs' compound wall. The learned Judge has also observed that the respondents shall be at liberty to make construction on the other part of the property as per Municipal Corporation's approved plan. Aggrieved by the said judgment and order, the original defendants have preferred this revision application under Section 115 of the Civil Procedure Code.

3. Heard Mr. Jitendra M. Patel for the revisioners and Mr. Hakim for the respondents.

4. Mr. Patel has taken this Court through the impugned judgment. His main thrust is that the Court below has not passed a reasoned order. He has taken this Court through the entire order to emphasize that the Court below has discussed the contentions raised by both the sides and hence ultimately passed the order without assigning any reasons for partly allowing the appeal.

5. Mr. Hakim was also at loss to support this judgment. Under the circumstances this revision application deserves to be allowed. The impugned order is set aside. The matter is remanded to the Court below for rehearing the appeal and deciding the matter afresh by passing a reasoned order. Rule made absolute. No costs. The lower Court is directed to hear and decide the appeal within two months from the date of receipt of writ of this order. The parties are directed to maintain status-quo till then.

[A.L. DAVE, J.]

* Pansala.